

DECISION

29357
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-214639

DATE: September 19, 1984

MATTER OF: JDR Systems Corporation

DIGEST:

Protester's contention that its proposal should be retained in the competitive range because it is technically acceptable is denied because all technically acceptable proposals need not be retained; rather, only those which have a reasonable chance of being selected for award. Consequently, where, as here, each of the three firms within the competitive range submitted proposals that are both higher scored technically and lower in cost than the protester's, the agency had a reasonable basis for excluding the protester's proposal.

JDR Systems Corporation protests its exclusion from the competitive range under request for proposals No. N00421-83-R-0125 issued by the Patuxent River Naval Air Station to acquire technical and engineering services. JDR contends that its proposal should be included in the competitive range because it is both technically and financially competitive.

We deny the protest.

The solicitation sought engineering and technical services to support the installation's test and evaluation of ground support equipment used to maintain Naval aircraft. The solicitation provided that proposals would be evaluated in accordance with five criteria: technical comprehension, prior experience, personnel capabilities, management plan and facilities. It further provided that cost realism would be evaluated, and that award would be made on the basis of the proposal offering the greatest value to the government, taking into account both technical considerations and cost.

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Proposals were received on August 31, 1983 and scored in accordance with the stated evaluation criteria, which scores were combined with cost to form a composite score. The three firms with the highest composite scores, which were the three firms with both the highest technical scores and the lowest evaluated costs in this instance, were determined to be in the competitive range. The remaining firms, including JDR, were then eliminated from further consideration. The Navy advised JDR that its proposal had been excluded from the competitive range by letter of February 23, 1984. JDR filed a timely protest with this Office challenging that determination. The Navy has withheld selection announcement pending this Office's decision on the merits.

JDR argues that because its proposal is technically and financially competitive, it should not have been rejected without discussions. In this regard, JDR points out that it proposed many of the personnel currently working for the incumbent, that its technical and management experience are more than adequate for the job and that its cost estimates are based on realistic and pragmatic analysis. JDR also questions the Navy's statement that the low offeror's proposed cost is nearly \$1,000,000 less than JDR's, arguing that JDR's proposed costs are as low as possible given the necessity for complying with the minimum wage rates established by the Service Contract Act. Moreover, although the Navy has not provided specific information regarding its evaluation of other proposals since the procurement is still in process, JDR further disputes the Navy's assertion that JDR's proposal was lowest ranked or second lowest ranked in each of the evaluation categories. Finally, JDR argues that the 5 or 6 month delay in establishing the competitive range invalidates the evaluation, since market conditions, wage rates and the like may change in the interim.

As to JDR's assertion that its proposal should be included in the competitive range because it is technically and financially competitive, such argument fails to recognize that not all offerors who submit worthwhile proposals are entitled to proceed to written and oral discussions. Rather, discussions in negotiated procurements need be held only with those offerors whose proposals have a reasonable chance of being selected for award. Informatics General Corporation, B-210709, June 30, 1983, 83-2 CPD ¶ 47. The competitive range is determined by comparing all of the acceptable proposals in a particular procurement, 52 Comp. Gen. 718 (1973), and an

acceptable proposal may be eliminated by comparing the relative ranking of higher ranking proposals to the proposal in question. Art Anderson Associates, B-193054, Jan. 29, 1980, 80-1 CPD ¶ 77. Consequently, a proposal need not be included in the competitive range simply because it is technically acceptable when it is determined that it has no reasonable chance of being selected for award.

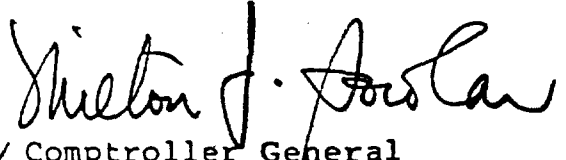
Here, JDR's proposal, as well as the other proposals that were eliminated, were compared to three proposals that were both higher ranked technically and significantly lower in cost. Given this relative difference in both cost and technical considerations, we see no basis for questioning the reasonableness of the contracting officer's determination to retain only the three top-ranked firms in the competitive range, and to eliminate the lower-ranked proposals, which had to overcome both a technical and cost disadvantage, from further consideration. Further, JDR's proposal was neither the next highest ranked technically nor the next lowest in price, so even if the competitive range were expanded to four, JDR's proposal still would be excluded.

With respect to JDR's contention that the low offeror could not comply with the minimum wage requirements of the Service Contract Act in view of the approximately \$1,000,000 difference between its proposed costs and JDR's proposed cost, our review of the cost proposals indicates that the difference is attributable to a number of factors other than the minimum wage requirement. As to JDR's assertion that its proposal should be highly rated in the personnel category because it proposed many of the incumbent's personnel, the record indicates that all of the offerors did the same to varying degrees. Consequently, there is no basis for concluding that JDR's proposal warranted special consideration simply because it proposed to use the incumbent's personnel. In short, we find no basis to object to the evaluation.

Finally, JDR objects to the Navy's delay in evaluating proposals and establishing a competitive range, the results of which were not announced until 6 months after proposals were received. JDR argues that because market conditions and personnel availability can change over 6 months, the competitive range is based on stale information of questionable validity.

While we would agree that the Navy might have acted more expeditiously in this case, we are unaware of any law or regulation that would require action by the Navy within a set time period, and none has been cited by the protester. Moreover, we note that standard form 33 of the solicitation contains a space for offerors to indicate the number of days their offers remain valid. This allows offerors to protect themselves from market or other changes by simply refusing to extend their acceptance period when it expires. Consequently, it is fair to assume that those offerors who extend their offers do so in light of the then current market conditions and the availability of personnel to perform the work, so that there is no apparent reason to question the validity of the information upon which the competitive range is based. In any event, offerors may not sit by with knowledge of an alleged impropriety--undue delay here--and then protest only when the outcome is known. See Cadillac Gage Company, B-209102, July 15, 1983, 83-2 CPD ¶ 96.

The protest is denied.

for 
Comptroller General
of the United States